IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1481 OF 2007

Mr.Kashinath R. Mistry
Since deceased
1(a) Smt.Narmada Kashinath
Mistry & Ors. .. Appellants.

Versus

The Municipal Corporation
of Greater Bombay .. Respondents.

Mr.V.S.Kapse for appellants.
Mr.J.J.Xavier for respondent-B.M.C.

CORAM : SMT. R.S. DALVI, J.
DATE : 25th June, 2007.

P.C.

1. This appeal impugns the judgement and order dated 23.03.2007 passed by the Bombay City Civil Court, dismissing the appellant's suit. The appellant is challenging the notice dated 15.10.1998 and the order of the Bombay Municipal Corporation dated 09.11.2000 with regard to the construction of the first floor of his house. The parties have relied upon the documents,

admittedly based upon which, this appeal can be disposed of at the admission stage itself.

2. The appellant was admittedly given a lease by way of a letter of a plot of land on which he was to construct the structure. He constructed the structure, which was assessed from 1960-1961 as a house under the assessment No.GS-606. The appellant admittedly applied for immediate repair permission in October, 1997 stating that the structure is in dilapidated condition and is on the verge of collapse. The notice has been issued in 1998.

3. It is the contention of the respondent that the appellant constructed a new first floor under the implied repair permission granted upon his application which was not refused by the Bombay Municipal Corporation.

4. The verification of the assessment bill

assessed shows that it relates not to the first floor of his house. Besides, the order of the Bombay Municipal Corporation shows that there was change in the repairable value made in 1998 itself due to renovation.

5. The appellant, therefore, failed to show that the structure for which he claimed protection by way of injunction was authorised since it was not shown to be assessed during 1961-1962 and specifically shown to be assessed only w.e.f. 01.04.1998.

6. The learned Judge has correctly appreciated the documentary evidence relating to the immovable structure and dismissed the appellant’s suit. There is no case made out in the appeal for setting aside the said judgement.

7. However, the appellant contends that the structure is in a gaonthan and the structures

there are constructed without plans submitted to the Bombay Municipal Corporation. He has produced the photographs to show various structures around his structure having one upper floor.

8. Both the Advocates concede that in another case in the same gaonthan, a structure which was the first floor was held to be irregular and allowed to be regularised by this Court. The appellant's structure is indeed irregular. It cannot be protected by any order of this Court. The appeal is dismissed. Ad-interim order is vacated.

9. However, if the appellant concedes that his structure is irregular, he may make an application for its regularisation to the respondents which may be considered in the discretion of the M.M.C. Interim order is not continued since the appeal is dismissed.

(Smt.R.S. DALVI, J.)